

**Matter of O'Farrow v Department of Hous.  
Preserv. & Dev.**

2007 NY Slip Op 31398(U)

May 29, 2007

Supreme Court, New York County

Docket Number: 0403160/2006

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **HERMAN CAHN**  
*Justice*

PART 49

O'Farrow, J

INDEX NO. 403160/06

MOTION DATE 2/26/07

MOTION SEQ. NO. 02

MOTION CAL. NO. \_\_\_\_\_

- v -

Dept of Housing

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**OTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE . . . . .**

**FILED**  
MAY 31 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/29/07

Herman Cahn

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 49

-----X  
 :  
 In the Matter of the Application of :  
 JOAN O’FARROW, :  
 :  
 Petitioner, :  
 :  
 for a Judgment Pursuant to Article 78 of the Civil Practice :  
 Law and Rules :  
 :  
 - against - :  
 :  
 DEPARTMENT OF HOUSING PRESERVATION AND :  
 DEVELOPMENT. :  
 :  
 Respondent. :  
 :  
 -----X

Index No. 403160/06

**FILED**  
 MAY 31 2007  
 NEW YORK  
 COUNTY CLERK’S OFFICE

**Herman Cahn, J.**

Petitioner, Joan O’Farrow, brings this Article 78 proceeding: (1) to reverse respondent’s decision to deny her Section 8 benefits; and (2) to stay a related proceeding, *WB/Stellar IP Owner LLC v O’Farrow*, index no. 78589/06, pending in the Housing Court of the Civil Court of the City of New York, New York County.

**BACKGROUND**

Respondent, Department of Housing Preservation and Development (“HPD”), determined that petitioner is no longer entitled to a Section 8 subsidy for her apartment located at 40 Harrison Street, New York, New York (the “Premises”).

The Section 8 program (“Housing Choice Voucher Program”) is a federally funded program enacted to assist lower income families to obtain affordable privately owned rental

housing. 24 CFR 982.1(a)(1) (2007). The program is generally administered in New York City by HPD. The obligations of Section 8 participants are set forth in Title 24 CFR 982.551.

In addition to the regular housing vouchers, HPD also offers enhanced vouchers to eligible families when a private property owner opts out of the program and converts the property to market rate housing.

The building located at 40 Harrison Street, New York, New York, was previously part of the Mitchell-Lama program, a limited-profit housing program. In 2004, the owner of the building opted out of the program. HPD notified the tenants of this change and informed them that, in order to be eligible for enhanced Section 8 benefits, tenants must have a current lease and reside in the development prior to the conversion date, which was September 1, 2004.

Petitioner submitted a Section 8 Existing Housing Program Application for Rental Assistance to HPD, dated July 28, 2004. HPD approved the application and entered into a Housing Assistance Payments Contract with the owner of the Premises for a lease term to begin on September 1, 2004.

By letter dated June 17, 2005, petitioner informed HPD that she would no longer reside at the Premises as of July 9, 2005, but that her two sons would continue to live in the apartment. She requested that her Section 8 benefits be transferred to them.

On December 2, 2005, petitioner wrote to Patricia Douthett, a Section 8 caseworker, reiterating her request that her Section 8 benefits be transferred to her two sons. She enclosed a copy of her Pennsylvania driver's license as proof of her new address at 1124 Crestview Road, Stroudsburg, Pennsylvania.

While reviewing petitioner's request, HPD discovered that her Pennsylvania driver's

license was issued on June 8, 2004, prior to the conversion date. As a result, an HPD case manager recommended that petitioner's Section 8 subsidy be terminated and referred the case to HPD's Program Integrity and Compliance ("PIC") for termination. PIC further investigated and determined that petitioner did, in fact, reside in Pennsylvania prior to the conversion date and that she had submitted false documents to HPD regarding her application. Therefore, it concluded that petitioner was not entitled to Section 8 benefits from the start.

HPD sent petitioner a "Notice of Section 8 Rent Subsidy Termination," dated May 8, 2006, informing her that her Section 8 benefits would be terminated effective May 29, 2006 "due to prior residing." The termination letter was sent via certified mail, return receipt requested, and also by regular mail. It stated that petitioner had 21 days from the date of the Notice to challenge the termination.

On July 7, 2006, petitioner sent a written request to HPD seeking an informal hearing. In a letter dated July 10, 2006, HPD denied her request, stating that petitioner had missed the 21-day deadline. Petitioner alleges that she never received the Notice. In fact, the letter sent by certified mail, return receipt requested was stamped "Unclaimed" and returned to HPD. The letter sent by regular mail was not returned, however, petitioner contends that she did not receive it.

Consequently, petitioner commenced this Article 78 proceeding on August 7, 2006 to reverse HPD's decision terminating her Section 8 subsidy.

## **DISCUSSION**

Administrative agencies are given broad discretion in making determinations on matters within their purview. As a result, judicial review of an agency's determination under CPLR 7803

982.552(c)(1) are met, such as the family obligations listed in section 982.551 have been violated. 24 CFR 982.552(c)(1)(i). Two such family obligations that respondent alleges were violated are: (1) the applicant must submit true and complete information with regard to seeking housing assistance (*id.* § 982.551(b)(4)); and (2) the Premises “must be the family’s only residence” (*id.* § 982.551(h)).

Based on the fact that HPD discovered petitioner co-owned the Pennsylvania house since June 2004 and that petitioner admitted she spent at least a couple of nights per week in Pennsylvania, the unit in New York was not her only residence. Therefore, HPD did not act arbitrarily or abuse its discretion by terminating petitioner’s housing benefits. Rather, it did so based on the discoveries it made while considering petitioner’s application to transfer her benefits, which indicated that the information on her application had not been correct.

Petitioner provided many explanations for her connections to Pennsylvania, insisting that she traveled back and forth to Pennsylvania, but continued to live in New York. However, it was not unreasonable for HPD to view all these facts in the way it did -- accumulating evidence that established petitioner had another residence in Pennsylvania, in violation of the family obligations for continued rental assistance. 24 CFR 982.551(h)(1). Because petitioner was never entitled to the Section 8 benefits, she was not able to transfer those benefits to her sons, and her application to do so was rightfully denied.

Section 8 subsidies are limited; there are generally more applicants than there are available subsidies. Thus, were HPD to grant a subsidy to an applicant who is not entitled to one, it would be denying a subsidy to another applicant, who presumably is entitled to one.

Therefore, respondent’s determination was not arbitrary, capricious or an abuse of

discretion, and the petition is dismissed. Petitioner's request to stay the proceeding entitled *WB/Stellar IP Owner LLC v O'Farrow*, index no. 78589/06, pending in the Housing Court of the Civil Court of the City of New York, is denied, and any stay heretofore imposed, is vacated.

Accordingly, it is

ORDERED that the Petition is dismissed in its entirety; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

Dated: May 29, 2007

ENTER:

  
\_\_\_\_\_  
J.S.C.

**FILED**  
MAY 31 2007  
NEW YORK  
COUNTY CLERKS OFFICE